

REMARKS

Claims 1-8 have been examined and have been rejected under 35 U.S.C. § 103(a).

I. Rejections under 35 U.S.C. § 103(a) in view of U.S. Patent No. 6,092,113 to Maeshima ("Maeshima") and Applicant's alleged Admitted Prior Art ("alleged AAPA").

The Examiner has rejected claims 1, 4, 5, 6, 7 and 8 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maeshima and the alleged AAPA.

A. Claim 1

Applicant submits that claim 1 is patentable over the cited references. For example, claim 1 recites a scheduler program which spans a services management layer and a network management layer.

The Examiner acknowledges that Maeshima does not disclose the scheduler program, but continues to maintain that the alleged AAPA does. As set forth in the January 26, 2006 Response, the portion cited by the Examiner as the alleged "AAPA" is in fact, not prior art. Rather, the cited portion forms part of the present invention. Applicant submits that the Examiner is failing to consider the clear, unequivocal statements in the specification which describe the scheduler program PGA as a feature of the present "invention." In particular, in the Brief Description of the Drawings section, the specification clearly discloses that although Figure 1 depicts a prior art three layer management system, Figure 1 also shows the location at which the invention is implemented (pg. 4, lines 24-26) (i.e., the PGA is a separate feature from the three layer management system). In the Description of the Prior Art section, the specification

further discloses that the “invention” is located at the interface of the NML and the SML as shown in Figure 1. The PGA, labeled in Figure 1 and located at the interface of the NML and the SML, is specifically described as a feature of the present invention in the non-limiting embodiment on page 5, lines 7-8 of the Detailed Description portion of the Application.

Further, since Figure 1 is not labeled as “prior art,” the Examiner cannot blindly presume that all features therein constitute prior art since the specification clearly states, in a forthright manner, that the PGA is part of the present invention. Applicant submits that the clear statements set forth in the specification cannot be ignored by the Examiner. In summary, Applicant submits that the specification *clearly* indicates that the portion cited in Figure 1 (i.e., the PGA) is part of the present “invention,” and not the prior art. Thus, the PGA does not constitute prior art, and therefore, does not cure the deficient teachings of Maeshima.

In addition, claim 1 recites that, “the step of receiving connection requests, the step of verifying the possibility of setting up the connections, and the step of updating said database are preformed by a scheduler program which spans a services management layer and a network management layer.”

As set forth in the January 28, 2005, June 17, 2005, and January 26, 2006 Amendments, Maeshima merely discloses that routers (e.g. 300A, 300, and 300B) on an IP tunnel 101 transmit and receive packets which correspond to the “[contents] of a reservation [request];” (Col. 5, lines 47-48). Even if it were assumed *arguendo* that the information contained in the packet also corresponds to a designated date and time for reserving bandwidth on the IP tunnel 101, since the

packet is transmitted and received between the router at the start point of the IP tunnel 101 (e.g. 300A) and the router at the end point of the IP tunnel 101, (e.g. 300B) Maeshima simply does not teach that the step of receiving connection requests is performed by a scheduler program which spans a services management layer and a network management layer as claimed.

Based on the foregoing, Applicant submits that claim 1 is patentable over the cited references.

B. Claim 7

Claim 7 recites, “wherein the means for receiving connection requests spans a services management layer and a network management layer.” Accordingly, Applicant submits that claim 7 is patentable for at least analogous reasons as set forth above for claim 1.

C. Claims 4, 5, 6 and 8

Since claims 4, 5, 6 and 8 are dependent upon one of claims 1 or 7, Applicant submits that claims 4, 5, 6 and 8 are patentable at least by virtue of their dependency.

II. Rejections under 35 U.S.C. § 103(a) in view of Maeshima, the alleged AAPA and U.S. Patent No. 6,115,382 to Abe (“Abe”)

The Examiner has rejected claims 2 and 3 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maeshima, the alleged AAPA and Abe. However, since claims 2 and 3 are dependent upon claim 1, and Abe fails to cure the deficient teachings of Maeshima and the

RESPONSE UNDER 37 C.F.R. § 1.116
U.S. Application No.: 09/871,816

Attorney Docket No.: Q64768

alleged AAPA, Applicant submits that claims 2 and 3 are patentable at least by virtue of their dependency.

III. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

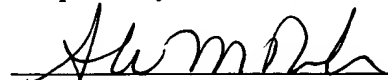
WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: **May 18, 2006**

Respectfully submitted,



Allison M. Tulino
Registration No. 48,294